

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHY KEPFORD

Claimant

VS.

AMAZON.COM

Respondent

AND

ROYAL & SUNALLIANCE

Insurance Carrier

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Docket No. 253,538

ORDER

Respondent and its insurance carrier appealed the August 14, 2001 Order for Compensation entered by Administrative Law Judge Brad E. Avery. The Judge awarded claimant temporary total disability benefits.

ISSUES

Respondent and its insurance carrier contend the Judge lacked the authority and jurisdiction to order temporary total disability compensation as the evidence allegedly shows claimant is performing substantial and gainful employment. Conversely, claimant argues in her brief that this appeal should be dismissed because respondent and its insurance carrier do not raise a jurisdictional issue. Those are the only issues before the Board on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

This is an appeal from a preliminary hearing order. The issue raised by respondent and its insurance carrier is not a jurisdictional issue and is not subject to review at this stage of the proceedings.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction. K.S.A. 1999 Supp. 44-551. This includes review of the preliminary hearing issues listed in K.S.A. 1999 Supp. 44-534a as

jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term “certain defenses” refers to defenses which dispute the compensability of the injury under the Workers Compensation Act. In *Carpenter*,¹ the Court held:

The term “certain defenses” in K.S.A. 1998 Supp. 44-534a refers to defenses subject to review by the Workers Compensation Board only if they dispute the compensability of the injury under the Workers Compensation Act. (Syllabus 3.)

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 1999 Supp. 44-534a. Nor did the Judge exceed his jurisdiction in granting claimant’s request for temporary total disability benefits.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.²

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.³

WHEREFORE, the Board dismisses respondent and its insurance carrier’s appeal of the August 14, 2001 Order for Compensation entered by Judge Brad E. Avery.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Matthew J. Thiesing, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

³ K.S.A. 1999 Supp. 44-534a.

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Philip S. Harness, Workers Compensation Director